IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6848 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - : NO

2. To be referred to the Reporter or not? - :

3. Whether Their Lordships wish to see the fair copy of the judgement? - : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - : NO

5. Whether it is to be circulated to the Civil Judge? - : NO

PRAHLADBHAI R MAHERIA

Versus

ADMINISTRATIVE OFFICER (EDUCATION)

Appearance:

MR JV MEHTA for Petitioners

MR LR PUJARI AGP for Respondent 2.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. List has been revised.. Nobody appeared on behalf of the parties.

2. This petition has been preferred against the transfer order dated 28-10-1987. The petitioners are Assistant Teachers in the District Panchayat and they

have been transferred from village Rupal to village Durgi by the impugned order dated 28-10-1987. The transfer order dated 28-10-1987 has been challenged on the ground that the impugned order is illegal and is passed in fraagrant violation of the Circulation dated 17-10-1981. It is provided in the said circular that the transfer of teacher can be made in summer vacation and in an exceptional case, if they want to transfer the teacher, before or after the summer vacation, they ought to have obtained prior permission from the Director of Primary Education with the specific reasons for transfer. In the present case, the petitioners have been directed to be transferred in the month of October-November, 1987 and no prior permission has been obtained from the Director of Primary Education. As such, the transfer of the petitioners is in violation of the Circular dated 17-10-1981. It is also asserted in the petition that the petitioner no. 1 was transferred from Motiboru School, Motiboru to Kerala School, Kerala by the respondents vide the order dated 5-7-1985. Within four months the petitioner no. 1 was again transferred from Kerala School, Kerala to Chhabesar vide order dated 25-11-1985.

3. The petitioner filed Special Civil Application No. 1112/86 before this Hon'ble Court challenging the said transfer order wherein the interim relief was granted by this Court. The said petition was withdrawn by the petitioner on 1-9-1986 with a liberty to make representation before the respondents and the respondents were directed to decide the same within six weeks. The petitioners made the representation to the respondents and the respondent no.2 directed the respondent no. 1 to transfer the petitioner and his wife at Rupal village from village Kerala. The respondent no. 1 again passed the order dated 28-10-1987 within period of about one year transferring the petitioners from one place to another. The petitioners made the representation to the respondents on 10-11-1987 but the said representation has not been decided by the respondents. The present transfer has been made on the ground of surplus of teachers and adjustment of the students though it is asserted in the petition that strength of the students at the time of their transfer from Kerala to Rupal remained the same even on which ground the petition was filed. As such, no question of surplus of teachers arises and the order of transfer was made only with a view to harass the petitioners. As such, the order of transfer is illegal, arbitrary, discriminatory and malafide.

4. At the initial stage, this Court passed the order dated 29-12-1987 whereby the interim relief was granted

to the extent that in case the transfer order has not been implemented, the respondents were directed not to relieve the petitioners.

5. From the assertions made in the petition, it appears that the transfer order has been challenged on the ground that it is violative of certain Circulars of the concerned education department. From the allegations made in the petition, it does not appear that the transfer of the petitioners was made malafide or against the statutory provisions of law. The transfer order has been challenged only on the ground that it is in violation of the circular, as aforesaid. In the present case, factually the transfer of the petitioners has been made on the basis of strength of the students and surplus of the teachers and the petitioners - teachers who were surplus were transferred from one place to another. No malafide is shown or alleged in the petition against the respondents and there is no violation of statutory provisions of law or Circulars. The petitioners have no vested right that they shall not be transferred from one place to another. The grounds on which they were transferred from one village to another village does not appear to be arbitrary, illegal and violative of the statutory provisions of law or circulars.

6. No good ground is made out by the petitioners calling for interference by this Court in the extra ordinary jurisdiction under Article 226 of the Constitution of India. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier by this Court stands vacated.

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/JVSatwara/